

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

LAWRENCE BRANDYBURG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACT. NO. 1:23-cv-192-TFM-M
	)	
BISHOP STATE COMMUNITY	)	
COLLEGE, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

On June 29, 2023, Plaintiff Lawrence Brandyburg filed his first amended complaint. Doc. 2. The Federal Rules of Civil Procedure allow a party to amend its pleading once as a matter of course within “21 days after serving it” or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” FED. R. CIV. P. 15(a)(1)(A)-(B). Plaintiff is not permitted to file his first amended complaint as a matter of course because he does not meet any of the above requirements – i.e., more than 21 days have elapsed since service on the defendants was effected and since the defendants’ responsive pleadings was served. “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” FED. R. CIV. P. 15(a)(2).

As of the date of this Order, proof of service of the defendants has not been filed and a request for waiver was filed concurrently with the docketing of the first amended complaint. *See* Docs. 2, 3. Admittedly, the situation of filing an amended complaint in the infancy of a case before service even occurs, while not unique, does not clearly fit into the intent of Fed. R. Civ. P. 15(a). Yet, it is clear the defendants have not yet appeared, so it would be unusual to require Plaintiff to

obtain consent from the defendants in this matter. Since an amendment as of right does not clearly apply in this circumstance, the Court looks to the catch-all provision of Fed. R. Civ. P. 15(a)(2).

To the extent leave of court may be required, the Court construes Plaintiff's first amended complaint as a motion for leave to file an amended complaint. *See* FED. R. CIV. P. 8(e) ("Pleadings must be construed so as to do justice."). "The court should freely give leave [for a party to amend its pleading] when justice so requires." FED. R. CIV. P. 15(a)(2).

Accordingly, the Court considers Plaintiff's first amended complaint (Doc. 2) is the operative pleading in this matter. No further action is required to amend at this time.

**DONE** and **ORDERED** this 30th day of June 2023.

/s/ Terry F. Moorner  
TERRY F. MOORER  
UNITED STATES DISTRICT JUDGE